

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.205 OF 2006
WITH
CIVIL APPLICATION NO.294 OF 2006

Mr.Anil Victor Mendes. ..Appellant.

V/s.

Mr.Alban Anthony Hendrix & Anr. ..Respondents.

Mr.Jitendra G. Damani for appellant.

Mr. P.M.Shah for respondent Nos.2 and 3.

Mr.D.R.Singh for respondent Nos.4 to 6.

CORAM: A.M.KHANWILKAR, J

DATE : APRIL 5, 2006.

P.C. :

1. Heard counsel for the parties.
2. Admit.
3. None appears for the respondent no.1 though served. Mr.Shah waives notice for respondent Nos.2 and 3. Mr.Singh waives notice for respondent Nos. 4 to 6.
4. As short question is involved, appeal is heard forthwith by consent.

5. By this appeal, order passed by the trial court on 17th February, 2006 is challenged. By that order, the trial court refused to grant ad-interim relief. I will straightway advert to the order passed by the trial court which reads thus:

"After perusal of the entire record of the plaintiff on which the plaintiff relied, I do not find that the plaintiff has made out prima facie case for grant of ad interim relief. Hence no ad interim relief is granted in favour of the plaintiff as prayed. Defendants are granted time to file the reply to the motion alongwith their documentary evidence on 08.03.06. Plaintiff to serve the defendant No.1 also.

Motion be numbered. Motion for further consideration to 08.03.06.

6. Even on careful reading of the order, it is not possible to discern the reason, which weighed with the trial court to hold that the plaintiff has not made out prima facie case. Merely saying that documents are perused and no prima facie case is made out is wholly inappropriate. That statement is unintelligible, so as to discern the reason which weighed with the court to hold that no prima facie case is made out. It is well settled that grant or non-grant of ad-interim order is not a mechanical exercise but the court has to apply its mind and record some reason in the event, it is inclined to refuse the prayer for ad-interim relief. The reason

as recorded, in my opinion, cannot be sustained as tangible for upholding the impugned order. Accordingly, the impugned order is set aside. The parties are relegated before the trial court to reconsider the prayer for ad-interim relief forthwith. That be done in the week commencing from 10th April, 2006.

7. It is needless to observe that setting aside of the impugned order is not an expression of opinion, one way or the other on the issue of grant or non-grant of the ad-interim relief. All the questions in that behalf are left open to be decided on its own merits in accordance with the law.

8. Appeal as well as civil application disposed of on the above terms.